U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

DECISION OF THE BOARD OF IMMIGRATION APPEALS

File: A29 437 881 - Detroit
Date: Sep 16, 1992
In re: DANIELA CHESLEREAN

IN RE DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF
RESPONDENT: Richard A. Kulics, Esq.
401 South Woodward, Suite 370
Birmingham, Michigan 48009
ON BEHALF OF
SERVICE: Michael B. Dobson
General Attorney

CHARGE:
Order: Sec. 241(a)(2), I&N Act [8 U.S.C. §1251(a)(2) - Nonimmigrant - remained longer than permitted

APPLICATION: Asylum; withholding of deportation; voluntary departure

In a decision dated August 28, 1991, an immigration judge found the respondent deportable pursuant to section 241(2) of the Immigration and Nationality Act, 8 U.S.C. §1251(a)(2), denied her applications for

asylum *and* withholding of deportation pursuant to, respectively, sections 208(a) and 243(h) of the Act, 8 U.S.C. §1158(a) and 12533(h), and granted her voluntary departure. The respondent has appealed, challenging only that portion of the immigration judge's decision denying her requests for asylum and withholding of deportation. The respondent's appeal will be dismissed and her request for oral argument before this Board is denied. 8 C.F.R. §3.1(e)(1992).

The respondent is a 32-year-old married female, native and citizen of Romania, who overstayed her authorized stay here as a visitor. She was placed into deportation proceedings and charged with deportability as an alien who remained longer than permitted under section 241(a)(2) of the Act. At a master calendar hearing on january 29, 1991, the respondent conceded her deportability as charged but sought relief from deportation by

way of asylum, withholding of deportation and voluntary departure. 1/ On

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1. The respondent has not contested her deportability in this appeal to the Board. February 28, 1990, the respondent appeared before the immigration judge with counsel and presented testimonial and documentary evidence in support of her claims to relief. 2/.

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2. The factual circumstances underlying the respondent to persecution are comprehensively set forth in the immigration judge's decision, and therefore, they will not be repeated here.

At the conclusion of the final hearing session on August 28, 1991, the immigration judge rendered his oral decision denying the respondent both asylum and withholding of deportation. In so doing, the immigration judge determined that the respondent's claim of past persecution as well as her claim of a well-founded fear of persecution by the Ceausescu regime, which governed Romania when she left there in April, 1989, were

speculative and uncorroborated by documnetary evidence. Voluntary departure, in the alternative, was granted. This appeal followed.

On appeal from the adverse decision of the immigration judge, the respondent alleges that several errors wre committed by the immigration judge in denying her discretionary relief. In this regard, we point out that we have chosen to review the file de novo. Accordingly, the respondent has suffered no prejudice due to any alleged error by the immigration judge.

Upon review of the record at hand and independent of the immigration judge's decition, we find that the evidence presented does not demonstrate that the respondent was persecuted in the past or that a reasonable person in her cicumstances would fear persecution in Romanis. See section 101(a)(42) of the Act, 8 U.S.C. § 1101(a)(42); INS v. Cardoza-Fonseca, 480 U.S.

421(1987); INS v. Elias-Zacarias, ____ U.S. ____, 112 S.Ct. 812 (1992); Doe v. INS, 867 F.2d 285 (6th Cir. 1989); Castaneda-Hernandez v. INS, 826 F.2d 1526 (6th Cir. 1987); Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987); Matter of Chen, Interim Decision 3104 (BIA 1989).

The crux of the respondent's asylum request lies in her belief that the Romanian government seeks to persecute her because of her now-deceased father's friendships with Romanians who were living in the West. The respondent maintains that, because of these friendships, her father was "kicked out" of the Romanian army in 1975 and assassinated by the Ceausescu government in 1980. The respondent's claim, however, fails in several respects.

First, the record is devoid of any evidence that her father's dismissal from the romanian army was on account of one of the grounds enumerated in the Act. Even if her

father was expelled from the Romanian army for the reason the respondent believes,

this fact does not necessarily prove that his dismissal was invidiously motivated. In like manner, simply because the individual responsible for her father's death 3/

3. The respondent's father was struck by a car as he was crossing a street and was killed.

was never prosecuted for that fatal car accident does not prove that the romanian government plotted to have her father killed on account of his race, religion, nationality, membership in a particular social group, or political opinion. 4/

4. Although respondent's counsel assigns blame for this death on the Securitate, the Romanian secret police, counsel's conclusions are not evidence in these proceedings. See Matter of Ramirez-Sanchez, 17 I&N Dec. 503 (1980).

Second, even assuming the Romanian government was in some way responsible for

her father's death 12 years ago, the respondent has not shown that the romanian government ever sought or presently seeks to persecute her because of her relationship to her father or any one of the five grounds proscribed by the Act. Although the respondent and her husband may indeed have been demoted to less desirable positions within their respective companies, such actions are not, of themselves, "persecutory" acts within the meaning of the Act. In this regard, the respondent has failed to show that such actions were invidiously motivated. And, absent such a showing, these demotions, however difficult thay may have been for the respondent and her husband, do not support her claim to aylum relief. See INS v. Elias-Zacarias, ___ U.S.___, 112 S.Ct. 812 (1992) (observing that since "the statute makes motive critical," some evidence of the alleged persecutor's motive must be presented.) Further, such acts do not amount

to "persecution" in the absence of proof that the respondent and her husband were effectively precluded from substantial employment of the means of obtaining the basic necessities of life. We have reviewed the record in its entirety and find that no such showing has been made here. See Kapcia v. INS, 944 F.2d 702 (10th Cir. 1991); Skalak v. INS, 944 F.2d 364 (7th Cir. 1991); Gutierrez-Rogue v. INS, 954 F.2d 769 (D.C. Cir. 1992).

In spite of the warning the respondent allegedly received from an unidentified friend to leave Romania, 5/ the respondent

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5. The respondent was unable to detail the information her friend reportedly received that prompted this warning.

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was never physically harmed or mistreated in any way by the Romanian government during her residence there. The respondent pursued 4 years of college studies at a local university, secured a

professional position as an economist upon her completion of thosestudies, and enjoyed steady employment for 4 years with the same employer. 6/ The respondent was not polit-

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6. Contrary to the representations of respondent's counsel, the respondent was not fired from her job in 1988 -- she resigned. See Matter of Ramirez-Sanchez, supra.

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ically active in Romania and never openly expressed a view contrary to those of the Ceausescu regime.

There is no indication, furthermore, that the respondent's mother was ever mistreated in any way by the Romanian authorities for any reason. We note the respondent's mother left Romania in 1987 without any apparent difficulties. In this regard, the fact that the respondent was questioned on several occasions about the whereabouts of her mother following her mother's departure from Romania does not

prove or suggest that the Romanian government sought or presently seeks to persecute the respondent on account of an enumerated ground. Nor does the fact that the authorities searched her house in March 1988 for foreign clothing and currency lend support to the respondent's claim to section 208 relief absent proof of an underlying invidious motive. See INS v. Elias-Zacarias, supra; Coriolan v. INS, 559 F. 2d 993 (5th Cir. 1977); Soric v. INS, 346 F.2d 360 (7th Cir. 1965). 7/

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7. The respondent alleges in her request for Asylum in the United States (Form I-589) that she will face persecution from the Romanian government because she procured her Romanian passport illegally. To the extent the respondent would be held liable for having done so, such punishment, in the absence of an invidious motive, would necessarily be an act of "prosecution", rather than "persecution" within the meaning of the Act. See Cariolan v. INS, supra.

Moreover, even if we were incline (sic) to conclude other wise, current political conditions in Romania render the respondent's

reported fears of persecution anything but "well-founded". In this respect, this Board takes administrative notice 8/ of the drastic political changes that have occurred in Romania since the

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8. It is well established that administrative agencies and the courts may take judicial (or "administrative") notice of commonly known facts. See Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292 (1937). Therefore, this Board may properly take administrative notice of changes in

foreign governments. (footnotes omitted)

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respondent's departure from there in April 1989. In December 1989, the National Salvation Front (hereinafter "NSF"), composed of former communists, dissidents, intellectuals, students, and army generals, took power after the violent overthrow of communist dictator Nicolae Ceausescu and proclaimed Romania a parliamentary democracy based on the separation of executive, legislative, and judicial powers. The Securitate, the secret police charged with

suppressing all dissent and keeping the communist party in power, was dissolved. The NSF ruled romania until February 1990, when it joined with reepresentative of various political parties to become the Provisional council for national Unity (hereinafter "CPUN"). In May 1990, the first multiparty elections since 1946 were held nationally, and except for certain irregularities that marred the electoral process, the overwhelming majority of voters cast their ballots freely. See 1990 Country Reports on Human Rights Practices at 1253, Joint committee of the Senate and HOuse of Representative, 102d Congress, 1st Session (1991).

In the wake of wage demands by striking coal miners, a new Government committed to the economic and democratic reforms of its predecessor, emerged in September 1991 as a coalition of members of the NSF and other political parties, In November 1991, a new

Constitution, providing for multipary democracy and guaranteeing fundamental freedoms for its citizens in the areas of speech, assembly, association, religion, and travel, including the right to travel abroad and to freely immigrate, was approved by the Constituent Assembly and adopted by popular referendum in December 1991. See 1991 Country Reports on Human Rights Practices at 1218, 1223-24, Joint committee of the Senate and House of Representatives, 102d Congress, 2d Session (1992).

Laws encouraging foreign investment and calling for the privatization of most public enterprises and agricultural land have been passed while international human rights organizations have been permitted to circulate freely in Romania. In 1991, the

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Government established human rights offices in several of its ministries as well as a publicly-funded Romanian Institute for Human

Rights. See 1991 Reports at 1218, 1224.

Even though the respondent has testified to her continued fears of returning to Romania, the respondent has presented no evidence that the present Government in Romania presently is, or ever will be, interested in persecuting her for any reason. While we are mindful of the tragedy of her father's death, we nevertheless cannot conclude on this record that the respondent was persecuted in the past or that the government in Romania has a present interest in persecuting her such that a reasonable person in her circumstances would fear persecution by the Romanian government today. See Matter of Dass, Interim Decision 3122 (BIA 1988). Although the documentary evidence submitted by the respondent indicates that there have been incidents of serious internal unrest in romania, they do not speak of the respondent or her particular circumstances and do not lend support to her claim to

asylum.

In a related matter, the respondent seeks to have the case remanded for inclusion of testimony by an unnamed witness as to current conditions in Romania. We note that, in the course of the hearing, the immigration judge disallowed such testimony as irrelevant.

Although we disagree with the immigration judge's finding in this respect, we nevertheless see no reason to remand the record for inclusion of that testimony. While testimony concerning general conditions in a country is relevant to any asylum adjudication, such evidence does not, of itself, establish an alien's claim to asylum relief. See Matter of Dass, supra; Matter of Mogharrabi supra. Moreover, the respondent has failed to make any offer of proof that the elicited testimony would have changed the outcome of the case or that it would have been any different from the

information contained in the Country Reports. See Rojas v. INS, 937 F.3d 186 (5th Cir. 1991) (noting that the Country Reports are a "relatively impeccable" resource).

As a final matter, even if we were to assume that the respondent did experience persecution in Romania, or that at the time she left and for some time thereafter she had a well-founded fear of persecution should she return, it is not established that she presently warrants a grant of asylum. In Matter of Chen, supra, we stated that in certain circumstances past persecution alone might warrant a grant of asylum even if there was no reasonable likelihood of present persecution. For instance, asylum could be granted if the past persecution had been so severe that return to the country of persecution would be injumane. We do not find this to be the case here. The record, furthermore, does not disclose

any other humanitarian or compelling bases to warrant a grant of asylum under the circumstances of this case where we do not find that a well-founded fear of persecution presently exists wre the respondent to return to Romania.

Inasmuch as the respondent has failed to satisfy the lower burden of proof required for asylum, it necessarily follows that she also has failed to satisfy the clear probability standard of eligibility required for withholding of deportation. See INS v. Stevic, 467 U.S. 407 (1984). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order and in accordance with our decision in Matter of Chouliaris, 16 I&N Dec. 168 (BIA 1977), the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be

granted by the district director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

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FOR THE BOARD